

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RYAN J. BONIVERT,

Plaintiff,

v.

CITY OF CLARKSTON, et al.,

Defendants.

NO: 2:14-CV-0056-TOR

PROTECTIVE ORDER

BEFORE THE COURT is the parties' Stipulated Motion for a Protective Order (ECF No. 23). For good cause shown, the motion is granted.

IT IS HEREBY ORDERED:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. It does not confer blanket protection on all disclosures or responses to discovery; the protection it affords from public

1 disclosure and use extends only to the limited information or items that are entitled
2 to confidential treatment under the applicable legal principles, and it does not
3 presumptively entitle parties to file confidential information under seal.

4 2. “CONFIDENTIAL” MATERIAL

5 “Confidential” material shall include the following documents and tangible
6 things produced or otherwise exchanged: (1) plaintiff Ryan Bonivert’s medical
7 records and medical billing records. If appropriate, this stipulation may also be
8 applied to other sensitive or confidential items that may be produced in the future.

9 3. SCOPE

10 The protections conferred by this agreement cover not only confidential
11 material (as defined above), but also (1) any information copied or extracted from
12 confidential material; (2) all copies, excerpts, summaries, or compilations of
13 confidential material; and (3) any testimony, conversations, or presentations by
14 parties or their counsel that might reveal confidential material. However, the
15 protections conferred by this agreement do not cover information that is in the
16 public domain or becomes part of the public domain through trial or otherwise.

17 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 4.1 Basic Principles. A receiving party may use confidential material that
19 is disclosed or produced by another party or by a non-party in connection with this
20 case only for prosecuting, defending, or attempting to settle this litigation.

1 Confidential material may be disclosed only to the categories of persons and under
2 the conditions described in this agreement. Confidential material must be stored
3 and maintained by a receiving party at a location and in a secure manner that
4 ensures that access is limited to the persons authorized under this agreement.

5 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
6 otherwise ordered by the court or permitted in writing by the designating party, a
7 receiving party may disclose any confidential material only to:

8 (a) the receiving party's counsel of record in this action, as well as
9 employees of counsel to whom it is reasonably necessary to disclose the
10 information for this litigation;

11 (b) the officers, directors, and employees (including in house
12 counsel) of the receiving party to whom disclosure is reasonably necessary for this
13 litigation, unless the parties agree that a particular document or material produced
14 is for Attorney's Eyes Only and is so designated;

15 (c) experts and consultants to whom disclosure is reasonably
16 necessary for this litigation and who have signed the "Acknowledgment and
17 Agreement to Be Bound" (Exhibit A);

18 (d) the court, court personnel, and court reporters and their staff;

19 (e) copy or imaging services retained by counsel to assist in the
20 duplication of confidential material, provided that counsel for the party retaining

1 the copy or imaging service instructs the service not to disclose any confidential
2 material to third parties and to immediately return all originals and copies of any
3 confidential material;

4 (f) during their depositions, witnesses in the action to whom
5 disclosure is reasonably necessary and who have signed the “Acknowledgment and
6 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating
7 party or ordered by the court. Pages of transcribed deposition testimony or
8 exhibits to depositions that reveal confidential material must be separately bound
9 by the court reporter and may not be disclosed to anyone except as permitted under
10 this agreement;

11 (g) the author or recipient of a document containing the
12 information or a custodian or other person who otherwise possessed or knew the
13 information.

14 4.3 Filing Confidential Material. Before filing confidential material or
15 discussing or referencing such material in court filings, the filing party shall confer
16 with the designating party to determine whether the designating party will remove
17 the confidential designation, whether the document can be redacted, or whether a
18 motion to seal or stipulation and proposed order is warranted.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection.

1 Each party or non-party that designates information or items for protection under
2 this agreement must take care to limit any such designation to specific material that
3 qualifies under the appropriate standards. The designating party must designate for
4 protection only those parts of material, documents, items, or oral or written
5 communications that qualify, so that other portions of the material, documents,
6 items, or communications for which protection is not warranted are not swept
7 unjustifiably within the ambit of this agreement.

8 Mass, indiscriminate, or routinized designations are prohibited. Designations
9 that are shown to be clearly unjustified or that have been made for an improper
10 purpose (e.g., to unnecessarily encumber or delay the case development process or
11 to impose unnecessary expenses and burdens on other parties) expose the
12 designating party to sanctions. If it comes to a designating party's attention that
13 information or items that it designated for protection do not qualify for protection,
14 the designating party must promptly notify all other parties that it is withdrawing
15 the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in
17 this agreement (see, e.g., second paragraph of section 5.2(a) below), or as
18 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
19 protection under this agreement must be clearly so designated before or when the
20 material is disclosed or produced.

1 (a) Information in documentary form: (e.g., paper or electronic
2 documents and deposition exhibits, but excluding transcripts of depositions or
3 other pretrial or trial proceedings), the designating party must affix the word
4 “CONFIDENTIAL” to each page that contains confidential material. If only a
5 portion or portions of the material on a page qualifies for protection, the producing
6 party also must clearly identify the protected portion(s) (e.g., by making
7 appropriate markings in the margins).

8 (b) Testimony given in deposition or in other pretrial or trial
9 proceedings: the parties must identify on the record, during the deposition, hearing,
10 or other proceeding, all protected testimony, without prejudice to their right to so
11 designate other testimony after reviewing the transcript. Any party or non-party
12 may, within fifteen days after receiving a deposition transcript, designate portions
13 of the transcript, or exhibits thereto, as confidential.

14 (c) Other tangible items: the producing party must affix in a
15 prominent place on the exterior of the container or containers in which the
16 information or item is stored the word “CONFIDENTIAL.” If only a portion or
17 portions of the information or item warrant protection, the producing party, to the
18 extent practicable, shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items does not, standing alone, waive

1 the designating party's right to secure protection under this agreement for such
2 material. Upon timely correction of a designation, the receiving party must make
3 reasonable efforts to ensure that the material is treated in accordance with the
4 provisions of this agreement.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any party or non-party may challenge a
7 designation of confidentiality at any time. Unless a prompt challenge to a
8 designating party's confidentiality designation is necessary to avoid foreseeable,
9 substantial unfairness, unnecessary economic burdens, or a significant disruption
10 or delay of the litigation, a party does not waive its right to challenge a
11 confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any
14 dispute regarding confidential designations without court involvement. Any motion
15 regarding confidential designations or for a protective order must include a
16 certification, in the motion or in a declaration or affidavit, that the movant has
17 engaged in a good faith meet and confer conference with other affected parties in
18 an effort to resolve the dispute without court action. The certification must list the
19 date, manner, and participants to the conference. A good faith effort to confer
20 requires a face-to-face meeting or a telephone conference.

1 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
2 court intervention, the designating party may file and serve a motion to retain
3 confidentiality under Local Civil Rule 7. The burden of persuasion in any such
4 motion shall be on the designating party. Frivolous challenges, and those made for
5 an improper purpose (e.g., to harass or impose unnecessary expenses and burdens
6 on other parties) may expose the challenging party to sanctions. All parties shall
7 continue to maintain the material in question as confidential until the court rules on
8 the challenge.

9 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
10 IN OTHER LITIGATION

11 If a party is served with a subpoena or a court order issued in other litigation
12 that compels disclosure of any information or items designated in this action as
13 “CONFIDENTIAL,” that party must: (a) promptly notify the designating party in
14 writing and include a copy of the subpoena or court order; (b) promptly notify in
15 writing the party who caused the subpoena or order to issue in the other litigation
16 that some or all of the material covered by the subpoena or order is subject to this
17 agreement. Such notification shall include a copy of this agreement; and (c)
18 cooperate with respect to all reasonable procedures sought to be pursued by the
19 designating party whose confidential material may be affected.

20 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

1 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
2 confidential material to any person or in any circumstance not authorized under
3 this agreement, the receiving party must immediately (a) notify in writing the
4 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
5 all unauthorized copies of the protected material, (c) inform the person or persons
6 to whom unauthorized disclosures were made of all the terms of this agreement,
7 and (d) request that such person or persons execute the “Acknowledgment and
8 Agreement to Be Bound” that is attached hereto as Exhibit A.

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL

11 When a producing party gives notice to receiving parties that certain
12 inadvertently produced material is subject to a claim of privilege or other
13 protection, the obligations of the receiving parties are those set forth in Federal
14 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
15 whatever procedure may be established in an e-discovery order or agreement that
16 provides for production without prior privilege review. Parties shall confer on an
17 appropriate non-waiver order under Fed. R. Evid. 502.

18 10. NON-TERMINATION AND RETURN OF DOCUMENTS

19 Within 60 days after the termination of this action, including all appeals,
20 each receiving party must return all confidential material to the producing party,

1 including all copies, extracts and summaries thereof. Alternatively, the parties may
2 agree upon appropriate methods of destruction. Notwithstanding this provision,
3 counsel are entitled to retain one archival copy of all documents filed with the
4 court, trial, deposition, and hearing transcripts, correspondence, deposition and
5 trial exhibits, expert reports, attorney work product, and consultant and expert
6 work product, even if such materials contain confidential material.

7 The confidentiality obligations imposed by this agreement shall remain in
8 effect until a designating party agrees otherwise in writing or a court orders
9 otherwise.

10 **IT IS SO ORDERED.**

11 The District Court Executive is hereby directed to enter this Order and
12 provide copies to counsel.

13 **DATED** August 21, 2014.



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Eastern District of
Washington on _____ [date] in the case of Ryan J. Bonivert v. City of
Clarkston, et al, 2:14-cv-00056-TOR. I agree to comply with and to be bound by
all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person
or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Eastern District of Washington for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____